IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.2920 of 2007
[K.M. Hatwar Vs. Parmatma Eksevak Nagrik Sah. Bank Ltd., & another]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. R.K. Thakkar, Advocate for the petitioner.
Mr. W.M. Quazi, Advocate for respondent nos. 1 and 2.
Mr. A.S. Kilor, Adv., for intervener.

CORAM : A.H. JOSHI,J.

DATE : 26th November,2007.

1. Heard.

2. By this Writ Petition, the petitioner seeks :-

[a] Writ of Certiorari for quashing the sale of petitioner's house property, proclaimed and finalized by the respondent-Bank on 4th September, 2006.

[b] Writ of Mandamus whereby the relief sought is for one-time settlement of entire dues on payment of Rs. 33,11,000-00.

3. The dues recoverable are to the tune of Rs.54,91,312-01 as on 17th July, 2007. The Bank has refused to accept the offer of one-time settlement to be bona fide etc., and has stated that the one-time settlement offer cannot be accepted, as a last chance to make the payment was given through the letter dated 26th March, 2007, however, the amount has not been paid within time. Now, according to the Bank, the process of sale has advanced and the sale of property at the cost of Rs.29,05,000-00 is finalized.

4. In the course of hearing, learned Advocate for the petitioner raised various objections to the procedure of sale undertaken by the Bank.

5. It is seen that by the present petition, the Bank was precluded from taking possession and, therefore, the action under Section 13 [4] of the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 [Securitization Act , for short], is incomplete. Once the Bank takes possession, the petitioner has a right of appeal. Further, it is open for the petitioner to challenge actions of any other illegality in the procedure of auction. All further steps stand deferred due to the statua quo order passed by this Court in

this petition, which is still operating.

6. In the aforesaid premises, the petitioner is pursuing both prayers referred to in Para No.2 above.

7. In so far as first prayer is concerned, i.e. Prayer [a], for declaration of the sale to be invalid, it is seen that petitioner has a remedy under Securitization Act. As far as Prayer [c] for issuance of a Writ of Mandamus is concerned, it not based on any legal right.

8. In this situation, the petitioner's claim made in this petition lacks a legal foundation.

9. Moreover, a direction in the nature of Mandamus to accept one-time settlement cannot be given by issuing a Writ of Mandamus.

10. Nothing precludes the petitioner from making a fresh offer for one-time settlement. If considering the facts of the case, such as financial status of the party, liquidity of assets and other guidelines given by the Reserve Bank of India, and if the assets securing loan and other modes of recovery are not likely to cope up with the dues, the Bank would always be keen on getting one-time settlement.

11. In this background, this Court finds

that there no grounds for interference. Writ Petition deserves to be dismissed, and is accordingly dismissed. The petitioner has already succeeded in whiling away time.

12. Learned Advocate for the petitioner Mr. Thakker states that he prays for the interim order of status quo granted by this Court to be continued for a period of three weeks.

13. Writ Petition is dismissed, however, interim order passed by this Court on 6th July, 2007 shall remain in force till 17th December, 2007.

Judge

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